

ORIGINAL

1 Alexander Frid (State Bar No. 216800)
2 JONES DAY
3 555 West Fifth Street, Suite 4600
4 Los Angeles, CA 90013-1025
5 Telephone: (213) 489-3939
6 Facsimile: (213) 243-2539

7 Ryan C. Stottlemeyer (State Bar No. 212632)
8 JONES DAY
9 3 Park Plaza, Suite 1100
10 Irvine, CA 92614
11 Telephone: (949) 851-3939
12 Facsimile: (949) 553-7573

13 Attorneys for Defendant
14 EXPERIAN INFORMATION
15 SOLUTIONS, INC.

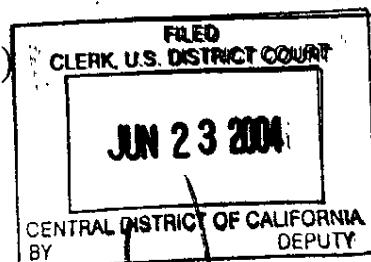
16 MAY 14 PM 3:22
17 CLERK U.S. DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 LOS ANGELES

20 JASON DENNIS, an individual,
21 Plaintiff,

22 v.

23 BEH-1, LLC, a limited liability
24 company in the State of California,
16 EXPERIAN INFORMATION
17 SOLUTIONS, INC., an Ohio
18 Corporation, and DOES 1 to 10,
19 inclusive,

20 Defendants.



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. LACV-03-7064 R (CWx)

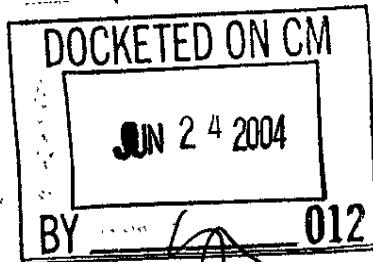
HON. MANUEL L. REAL

**STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF DEFENDANT
EXPERIAN INFORMATION
SOLUTIONS, INC.'S MOTION FOR
SUMMARY JUDGMENT**

[Filed concurrently with Notice of Motion
and Motion for Summary Judgment;
Request for Judicial Notice; and
[Proposed] Order]

Date: June 7, 2004
Time: 10:00 a.m.
Place: Courtroom 8

Action Filed: October 1, 2003
Trial Date: June 8, 2004



1 Pursuant to Local Rule 56-1, Defendant Experian Information Solutions, Inc.
 2 ("Experian") hereby submits the following Statement of Uncontested Facts and
 3 Conclusions of Law in Support of Experian's Motion for Summary Judgment:

4 After consideration of the papers in support of and in opposition to
 5 Defendants' Motion for Summary Judgment, as well as the oral argument of
 6 counsel, the Court makes the following determinations of uncontested facts and
 7 conclusions of law in this action.

8 **STATEMENT OF UNCONTROVERTED FACTS**

9 I. All of Plaintiff's claims.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
1. On October 22, 2002, an unlawful detainer complaint was filed by BEH-1, LLC, against Jason Dennis in the Superior Court of the State of California, County of Los Angeles, Case No. 02U17296.	1. Request for Judicial Notice ("RJN"), Ex. 3.
2. The Los Angeles County Superior Court's Civil Register of Actions for Case No. 02U17296 states: "11/25/02 Court Trial Concluded – Judgment Entered."	2. RJN, Ex. 1

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>3. The Los Angeles County Superior Court's November 25, 2002 Trial Minutes for Case No. 02U17296 state: "Pursuant to Written Stipulation, the parties applied to the court for judgment, which was so ordered."</p>	<p>3. RJN, Ex. 5.</p>

10 II. All of Plaintiff's claims.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>4. Plaintiff has not suffered any out-of-pocket losses as a result of inaccurate information on his credit report.</p>	<p>4. Plaintiff's Response to Request for Admission No. 19. [Ex. 5, at 7]</p>
<p>5. Plaintiff cannot adduce any evidence that an inaccuracy in his Experian credit report caused him actual injury.</p>	<p>5. Plaintiff bears the burden of proof and production.</p>
<p>6. Plaintiff cannot adduce any evidence that Experian's reinvestigation of Plaintiff's dispute concerning the accuracy of the judgment caused him actual injury.</p>	<p>6. Plaintiff bears the burden of proof and production.</p>

III. Plaintiff's "reinvestigation" claims pursuant to 15 U.S.C. § 1681i and California Civil Code section 1785.16. 11

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
7. On or about April 2, 2003, Plaintiff contacted Experian to purchase a copy of his Experian credit file, which Experian provided that same day.	7. Declaration of Kira Williams (“Williams Decl.”), ¶ 6.
8. On or about April 2, 2003, Plaintiff contacted Experian to request a reinvestigation of the judgment reported within his credit file.	8. Williams Decl., ¶ 8.
9. Plaintiff did not submit any documents to Experian at the time that he disputed the judgment.	9. Williams Decl., ¶ 9; Ex. 4, Deposition of Jason Dennis (“Dennis Depo”), at 40:17-20.
10. In response to Plaintiff’s dispute, Experian initiated a reinvestigation of the accuracy of the judgment.	10. Williams Decl., ¶ 11.
11. Experian contacted Dolan Information Services (“Dolan”), Experian’s third-party public records vendor for the Los Angeles County Superior Court.	11. Williams Decl., ¶ 11; Declaration of Wendy Little (“Little Decl.”), ¶ 5.
12. Experian identified Plaintiff to Dolan and the substance of Plaintiff’s dispute.	12. Williams Decl., ¶ 12; Little Decl., ¶ 5.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
13. Experian requested that Dolan verify the accuracy of the Los Angeles County Superior Court record being reported in Plaintiff's credit file.	13. Williams Decl., ¶ 12; Little Decl., ¶ 5.
14. Dolan verified the accuracy of the judgment reported in Plaintiff's credit file.	14. Williams Decl., ¶ 12; Little Decl., ¶¶ 6-7, Ex. B.
15. After completing the reinvestigation, the judgment remained in Plaintiff's credit file.	15. Williams Decl., ¶ 12, Ex. 1.
16. After completing the reinvestigation, Experian sent Plaintiff a copy of his credit file dated April 15, 2003 that communicated the results of Experian's reinvestigation.	16. Williams Decl., ¶ 13, Ex. 1.

IV. Plaintiff's claims for punitive and statutory damages pursuant to 15 U.S.C. § 1681n and California Civil Code section 1785.31.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
17. Experian has provided Plaintiff with a copy of his credit file every time that he requested it from Experian.	17. Williams Decl., ¶ 16; Ex. 4, Dennis Depo., at 83:4-6, 83:23-25.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
18.Upon receiving Plaintiff's only 2 dispute concerning the judgment on 3 or about April 2, 2003, Experian 4 reinvestigated the disputed 5 information and, after completing 6 the reinvestigation, sent Plaintiff a 7 copy of his credit file dated April 8 15, 2003 that communicated the 9 results of that reinvestigation.	18.Williams Decl., ¶¶ 11-13, Ex. 1; Little Decl., ¶¶ 5-7, Ex. B.
19.The Los Angeles County Superior 2 Court vacated the judgment entered 3 in Case No. 02U17296 against 4 Plaintiff on or about November 26, 5 2003.	19.RJN, Exs. 6, 7.
20.On or about December 17, 2003, 1 Experian deleted the judgment 2 from Plaintiff's credit file.	20.Williams Decl., ¶ 15, Ex. 3.

CONCLUSIONS OF LAW

1. Summary judgment must be entered where the moving party
2 demonstrates that "there is no genuine issue as to any material facts and that the
3 moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

2. Because the provisions of the Fair Credit Reporting Act, 15 U.S.C.
§§ 1681, *et seq.* ("FCRA"), and the California Consumer Credit Reporting
Agencies Act, Cal. Civ. Code. §§ 1785.14, *et seq.* ("CCRA") are analogous,
California courts recognize that decisions adjudicating the FCRA constitute

1 applicable authority for interpreting parallel provisions of the CCRA. See, e.g.,
 2 Pulver v. Avco Financial Servs., 182 Cal.App.3d 622, 634-35 (1986)..

3 3. To establish a *prima facie* case for any of Plaintiff's claims, Plaintiff
 4 must "present evidence tending to show that a credit reporting agency prepared a
 5 report containing inaccurate information." Guimond v. Trans Union Credit
 6 Information Co., 45 F.3d 1329, 1333 (9th Cir. 1995); see also Spence v. TRW, Inc.,
 7 92 F.3d 380, 382 (6th Cir. 1996) ("A showing of inaccuracy is an essential element
 8 of a claim" under Section 1681e(b)); Thomas v. Trans Union, LLC, 197 F. Supp.
 9 2d 1233, 1236 (D. Or. 2002) (Section 1681i(a) claim requires proof that the
 10 plaintiff's credit file contains inaccurate information).

11 4. Plaintiff cannot establish a *prima facie* case against Experian for any
 12 FCRA or CCRA violation.

13 5. Plaintiff cannot show that Experian prepared a report containing
 14 inaccurate information because Experian accurately reported the judgment entered
 15 against Plaintiff in the record of the Superior Court of the State of California,
 16 County of Los Angeles, from the unlawful detainer action entitled BEH-1, LLC v.
 17 Dennis, et al., Case No. 02U17296.

18 6. To establish a *prima facie* case for any FCRA and CCRA violation,
 19 Plaintiff must adduce competent and admissible evidence establishing both
 20 causation and injury. See Crabill v. Trans Union, LLC, 259 F.3d 662, 664 (7th Cir.
 21 2001) ("Without a causal relation between the violation of the statute and the loss
 22 of credit, or some other harm, a plaintiff cannot obtain an award of actual
 23 damages."); Cahlin v. GMAC, 936 F.2d 1151, 1160-61 (FCRA plaintiff bears the
 24 burden of proving that he or she was damaged as result of the alleged FCRA
 25 violations by the defendant credit reporting agency); Pendleton v. Trans Union
 26 Systems Corp., 76 F.R.D. 192, 195 (E.D. Pa. 1977) ("consumer who was denied
 27 credit must show that the denial was caused by inaccurate entries (which in turn
 28

1 were caused by the defendant's failure to use reasonable procedures), rather than by
 2 correct adverse entries or any other factors").

3 7. Plaintiff's FCRA and CCRA claims fail because Experian did not
 4 cause Plaintiff any injury.

5 8. There is no need to inquire into the reasonableness of a credit reporting
 6 agency's procedures if that agency has demonstrated that the consumer report at
 7 issue was in fact accurate. See Grays, 159 F. Supp. at 393 ("no need for the court
 8 to determine whether [credit reporting agency's] procedures assured maximum
 9 possible accuracy" where that agency has accurately reported what was contained
 10 within the public record); see also McPhee v. Chilton Corp., 468 F. Supp. 494
 11 (D. Conn. 1978).

12 9. When a credit reporting agency receives a dispute by a consumer, it
 13 must reinvestigate the disputed information within thirty days and promptly delete
 14 credit information that has been found to be inaccurate or unverifiable.

15 15 U.S.C. § 1681i(a)(1)(A), (a)(5)(A); Cal. Civ. Code § 1785.16.

16 10. To prevail on a reinvestigation claim, a plaintiff must demonstrate the
 17 following elements: (i) the plaintiff's credit file contains inaccurate information;
 18 (ii) the plaintiff notified the credit reporting agency directly of the inaccurate
 19 information; (iii) the credit reporting agency failed to maintain reasonable
 20 procedures for reinvestigations; (iv) the plaintiff suffered injury; and (v) the
 21 consumer reporting agency's failure caused the plaintiff's injury. See Thomas v.
 22 Trans Union, LLC, 197 F. Supp. 2d 1233, 1236 (D. Or. 2002); see also 15 U.S.C.
 23 § 1681i(a); Cal. Civ. Code § 1785.16.

24 11. Plaintiff's reinvestigation claims fail because Experian complied with
 25 its reinvestigation obligations under the FCRA and CCRA.

26 12. To recover punitive and statutory damages under the FCRA and
 27 CCRA, Plaintiff must prove that Experian willfully failed to comply with the
 28

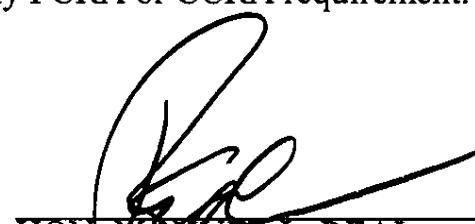
1 FCRA and CCRA requirements. See 15 U.S.C. § 1681n(a) and Cal. Civ.
2 Code § 1785.31.

3 13. Under the FCRA and CCRA, “willful” requires a showing that the
4 defendant “knowingly and intentionally committed an act in conscious disregard for
5 the rights of others.” See *Pinner v. Schmidt*, 805 F.2d 1258, 1263 (5th Cir. 1986).

6 14. Plaintiff cannot recover punitive and statutory damages because
7 Experian has not willfully violated any FCRA or CCRA requirement.

8 **LET JUDGMENT SO ENTER.**

9
10 Dated: June 23, 2004



11 HON. MANUEL L. REAL
12 UNITED STATES DISTRICT JUDGE

13 Submitted by:

14 JONES DAY

16 By: R. Stofflemyer
17 Ryan C. Stofflemyer

18 Attorneys for Defendant
19 EXPERIAN INFORMATION
20 SOLUTIONS, INC.

21

22

23

24

25

26

27

28

1 **PROOF OF SERVICE**

2 **JASON DENNIS V. BEH-1, LLC,**
USDC, Central Dist. Of CA, Case No. LACV 03-7064 R (CWx)

3 I, Pamela J. Carvalho, declare:

4 I am a citizen of the United States and employed in Orange County, California. I am over
5 the age of eighteen years and not a party to the within-entitled action. My business address is
6 3 Park Plaza, Suite 1100, Irvine, California 92614. On **May 14, 2004**, I served a copy of the
7 within document(s): **STATEMENT OF UNCONTROVERTED FACTS AND**
CONCLUSIONS OF LAW IN SUPPORT OF DEFENDANT EXPERIAN INFORMATION
SOLUTIONS, INC.'S MOTION FOR SUMMARY JUDGMENT

8 by transmitting via facsimile the document(s) listed above to the fax number(s) set
9 forth below on this date before 5:00 p.m.

10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Irvine, California addressed as set forth
12 below.

13 by placing the document(s) listed above in a sealed Federal Express envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
15 Express agent for delivery.

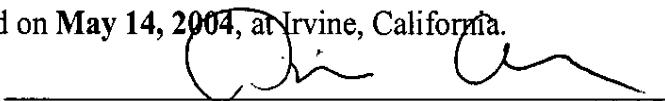
16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.

18 Louis P. Dell
19 Law Office of Louis P. Dell
3418 West Sixth Street
Los Angeles, CA 90020
Telephone: (213) 385-8856
Facsimile: (213) 385-8849
Counsel for Plaintiff, **JASON DENNIS**

20 Craig Mordoh
21 Attorney at Law
22 2530 Wilshire Blvd., Third Floor
23 Santa Monica, CA 90403
24 Telephone: (310) 453-6774
Facsimile: (310) 828-6371
Counsel for Defendant, **BEH-1, LLC**

25 I am readily familiar with the firm's practice of collection and processing correspondence
26 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
27 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
28 motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made. Executed on **May 14, 2004**, at Irvine, California.


Pamela J. Carvalho